



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory Supervisor
Virginia Department of Medical Assistance Services

FROM: USHA KODURU
Assistant Attorney General

DATE: May 6 2010

SUBJECT: Exempt Final Regulations to Implement Reimbursement and Provider Termination Changes

I have reviewed the attached exempt final regulations that will freeze or eliminate increases in reimbursement rates for hospitals and nursing facilities beginning in State Fiscal Year ("SFY") 2011, reduce payment rates for certain procedure codes by 3 percent in SFY 2011 and reduce those rates an additional 1 percent in SFY 2012. If there is an extension through June 30, 2011 of increased Federal Medical Assistance Percentage under the American Recovery and Reinvestment Act (Public Law 111-5), some of these actions will not be effective. In addition, an expansion of the provider terminations and exclusions are in accordance with Senate Bill 193 of the 2010 General Assembly. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to promulgate the regulation and if the regulation comports with state and federal law.

Item 297 of the 2010 Appropriations Act directs DMAS to amend these regulations. Based on my review, it is my view that the Director of DMAS, acting on behalf of the Board of Medical Assistance Services, pursuant to Virginia Code §§ 32.1-324 and 325, has the authority to amend these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority.

Brian McCormick
May 4, 2010
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Based on the foregoing, it is my view that the amendment of these regulations are exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A).

Because these regulations will amend the State Pan, approval from The Centers for Medicare and Medicaid Services will also be required.

If you have any questions, please contact me at 786-4074.

cc: Kim F. Piner, Esquire

Attachment